Jurisdictional Statement

Office - Supreme Court, U.S.
FILED
FEB 18 1982
ALEXANDER L. STEVAS,
CLERK

81-1589

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HUGH S. HUNT,

Appellant,

v.

JERRY L. COLLINS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Hugh S. Hunt,
Pro se
12219 River Rd.
Potomac, Md. 20854
(301) 299-2920

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1220

QUESTIONS PRESENTED

1. Does a general notice of a hearing in a local newspaper as authorized by Georgia Code constitute proper notice to an unrepresented, non-resident defendant, whose address is known to all concerned, that a hearing will be held on the non-resident's specific motion: (a) under any circumstances, or (b) in a case where a previous order of the Court specified that notices were to be sent to the non-resident at a specified address?

2. May the Supreme Court of Georgia interpret 6 Georgia Code Annotated 1801, allowing ten percent (10%) damages for appeals filed for purpose of delay only to be applied in a case where the appeal has been invited by the trial court?

3. May a judicial sale take place under the authority of a Georgia Court and be carried out by an officer of that court when that authority has been superseded in a removable case by removal to the United States District Court under Section 28 USC 1446, which provides in subsection (e) thereof. . . "The State Court shall proceed no further unless and until the case is remanded"?

PARTIES TO PROCEEDING

Hugh S. Hunt, Appellant-Defendant
EDHUL Co., Virginia Corporation, Defendant
Robert Henderson, Trustee of Reliance Trust, Defendant
Jerry L. Collins, Appellees, Plaintiff

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IN THE

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OCTOBER TERM, 1981

HUGH S. HUNT,

Appellant,

v.

JERRY L. COLLINS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

STATEMENT OF JURISDICTION

1. Jurisdiction lies in this case pursuant to Section 28 USC 1257 as drawing into question the constitutional validity of Section 81A Georgia Code Annotated 140(c) allowing notice of hearing for known out-of-state parties to be given solely through the means of a local newspaper publication when the court had previously granted an order which directed that all notices were to be sent to an address furnished by the out of state party.

2. An appeal is also based upon the unconstitutionality of 6 Georgia Code Annotated 1801 as interpreted to permit the Supreme Court of Georgia to fine Appellant 10 per cent for an appeal taken solely for delay when that appeal was taken upon the express recommendation of the trial court.

3. A separate, substantial federal question is raised, which in the absence of the right of appeal, would be properly raised by Petition for Writ of Certiorari, in that a State Court, acting through state officers, carried out a sale of Appellant's property during a period of federal removal.

The decision sought to be reviewed was by the Superior Court of Fulton County, Georgia, on July 6, 1981. An Appeal was docketed in the Supreme Court of Georgia August 25, 1981. The Order of the Georgia Supreme Court was issued without opinion November 19, 1981; Rehearing was denied December 15, 1981 also without opinion. Notice of Appeal was filed February 17, 1982, in The Supreme Court of Georgia.

Appeal to the Supreme Court of the United States is based on 28 United States Code 1257 as based upon a final judgment of the highest court of Georgia and calls into question two statutes of that state i.e. 81A Georgia Code Annotated 140(c) and 6 Georgia Code Annotated 1801 as interpreted by the Court so as to render then repugnant to the Constitution of the United States, and said Statutes so interpreted have been upheld by the Supreme Court of Georgia.

STATUTES INVOLVED

Section 81A Georgia Code Annotated 140(c). Assignment of Cases for Trial.

The courts shall provide for the placing of actions upon the trial calendar (1) without request of the parties but upon notice to the parties, or (2) upon request of a party and notice to the other parties. Excerpt for cause cases shall be placed upon the calendar in chronological order in accordance with filings dates. Precedence shall be given to actions entitled thereto by any statute.

Section 39 Georgia Code Annotated 1103. Selection of Official Organ.

No journal or newspaper published in this State shall be declared or made the official organ of any county for the publication of sheriff's sales, judge of the probate court's citations or any other advertising commonly known and termed "official or legal advertising" and required by law to be published in such county official newspaper, unless such newspaper shall have been continuously published and mailed to a list of bona fide subscribers for a period of two years, or is the direct successor of such journal or newspaper, and unless 85 per cent, of the circulation of such newspaper or journal is paid circulation. No change shall be made in the official organ of any county except upon the concurrent action of the judge of the probate court, sheriff and clerk of the superior court of said county or a majority of said officers; provided, that in counties where no journal or newspaper has been established for two years the official organ may be designated by the judge of the probate court, sheriff and clerk of the superior court, a majority of these officers governing.

Section 6 Georgia Code Annotated 1801. Damages in cases of affirmance.

Ten per cent, damages may be awarded by the appellate court upon any judgment for a sum certain, which has been affirmed, when in their opinion, the cause was only taken up for delay and it shall be so entered in the remittitur.

Constitution of the United States Fourteenth Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 USC 1450. Attachment or sequestration; securities

Whenever any action is removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant in such action in the State court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the State court.

All bonds, undertakings or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court.

28 USC 1257. State courts; appeal; certiorari

Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treates or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

STATEMENT OF FACTS

The above action was commenced in the state courts of Georgia by Jerry L. Collins in part to collect amounts allegedly owing pursuant to a judgment and writ of fieri facias for $300,000 obtained by Appellee Collins in another Georgia action, *Collins v. Prudential, et al,* Action B-91160. The action also alleged, without basis, that Defendants had conspired to put assets beyond the reach of Plaintiff and sought damages for such conspiracy.

A default judgment was entered against Appellant, who had mistakely believed another party defendant was providing his defense. A motion to open default was filed. Since Hunt then started to represent himself pro se, his address was furnished to the Court for communications and specifically was the subject of an order directing notices to be made to that address. However, he was not so notified of the date when his motion was to be heard and thus was

unaware of the hearing and not present. His motion to open default was then rejected by the court for failure to appear for a hearing, which had been merely calendared in a local newspaper in Atlanta in a motions day notice without listing the particular motion and without any specific notice to him that his motion was being heard.

After trial-level and appellate proceedings relative to jurisdiction, Honorable Joel Fryer of the Fulton County Superior Court ordered the sale on January 10, 1981, of the interest of Appellant in Reliance Trust No. 3, a Louisiana Trust which interest was worth over $1,250,000.

On October 18, 1980, Collins moved a second amendment to his complaint to add as a Defendant EDHUL Co., a Virginia Corporation doing no business in Georgia and having no officers or employees therein, which owned the residuary interest in the Trust. Without hearing or prior notice to EDHUL or to Defendant Hunt, who was acting pro se, the Court approved the amendment on October 20, 1980. The first notice of such approval reached EDHUL and Hunt on November 17, 1980. On December 5, 1980, EDHUL removed the case to the United States District Court for the Northern District of Georgia.

On January 6, 1980, in spite of such removal and the specific provisions of 28 USC 1446(e) forbidding further activity on the part of the state court, the judicial sale took place on the steps of the Fulton County Court House, conducted by the Sheriff of Fulton County "Pursuant to an Order of the Honorable Joel J. Fryer, entered in Civil Action C-43823 of the Fulton Superior Court" and, by its terms, subject to the approval of that Court, which patently lacked jurisdiction to render such approval or to conduct such sale. The only bidders were Collins and the son of Appellant Hunt, who then assigned his interest in his successful bid of $395,000 to Appellant EDHUL.

At the time of the sale and for three months thereafter, exclusive jurisdiction of the case was in the United States District Court. On April 20, 1981, Judge Hall of that Court remanded the case to the state court on the grounds that, although the case was removable, the removal was not timely. In doing so, he apparently relied on a fabrication in Appellee's "Petition for Remand and Brief in Support Thereof" to the effect that Hunt and EDHUL had notice of the signing of the October 20th order because they had participated in argument thereon. In fact there was no such argument, and the Appellee's statement, subsequently retracted sub silentio, was an outright lie.

On July 6, 1981, Judge Fryer of the state court, conducted a hearing to approve the January 6 sale. In so doing, he (1) commented that an appellate court would have to pass on the ultimate legal issues as he was uncertain about some aspects and lacked the resources and time to examine them thouroughly, (2) refused to pass further on constitutional questions raised by Appellants by ignoring the arguments and, (3) signed an order rejecting Hunt's motion to reopen the default judgment without entertaining argument on the merits thereof which motion was based upon constitutional inadequacy of notice of a hearing contained in the Fulton County legal newspaper without individual notice to Appellant in spite of a prior judicial order requiring such notice, and in spite of the fact that the notice itself failed to specify what matters or parties involved this rather complex litigation were before the state court on that date, and (4) ordered the $100,000, deposit turned over to Collins, who is apparently insolvent according to the affidavit of a third person. Appeals were then taken to the Supreme Court of Georgia.

The Supreme Court of Georgia, without opinion, upheld Judge Fryer and charged Appellants with costs of a

10 per cent penalty for an appeal taken solely for purposes of delay, in spite of Judge Fryer's recommendation on the record that an appeal be taken.

A motion to open the default judgment based on the inadequacy of notice and the unconstitutionality of the proceeding was filed May 12, 1981, and argued at the July 16, 1981 hearing and again on appeal.

The illegality of the State Court's action in conducting the sale of Appellant's Reliance Trust interest was raised at the July 6, 1981 hearing on approval of such sale and again on appeal.

The impropriety and constitutional effect of the 10 Per Cent damages statute was argued at the Georgia Supreme Court level in the Petition for Rehearing. Appellant had previously filed, the day of the Georgia Supreme Court's decision, an Answer to a Motion requesting such damages, addressed to the serious nature of the appeal.

The comments of the trial court relevant to these issues are appended hereto. The Supreme Court of Georgia filed no opinions but merely affirmed without opinion (with dissents noted as to the matter of the ten per cent fine) and denied rehearing without opinion. The Supreme Court of Georgia did not rule on the Answer to the Motion for Damages, and Appellant does not know whether that Court considered such Answer.

STATEMENT OF MATERIALITY OF ISSUES

APPELLANT WAS DENIED THE RIGHT TO NOTICE OF COURT PROCEEDINGS BY THE GEORGIA STATUTES

1. The right to notice of a court proceeding in which one's property is at stake is a fundamental one, far more

cogent than the mere administrative convenience of the courts. When a non-resident has been sued in courts hundreds of miles from his home, has chosen to exercise his constitutional right to defend his own interests and has taken the precaution of obtaining a court order that notice be sent to an address he had supplied for the purpose, it is unreasonable in the highest degree that no notice be provided of further proceedings involving him other than a vaguely worded calendar call (See Exhibit 5) in a local paper, and that a default involving hundreds of thousands of dollars be upheld on such a basis.

Yet the Supreme Court of Georgia, following the precedent of the Georgia Court of Appeals in *Spyropoulos v. Linard Estate,* 148 Ga. App. 380, 251 SE 2d 327 (1978) has apparently held that 39 Georgia Code Annotated 1103 and 81A Georgia Code Annotated 140(c) permit such practice. It is Appellant Hunt's contention that such law is therefore unconstitutional as constituting a deprivation of his property without due process of law and a denial of equal protection of the laws to him as a nonresident defendant. Such denial and deprivation constitute a violation of the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of the United States, in a line of caes commencing with *Mullane v. Central Hanover Bank and Trust Co.,* 339 U.S. 306, 70 S. Ct. 652 (1950) overturning the application of a statute authorizing notice by publication to beneficiaries of an application for judicial settlement of accounts and holding that beneficiaries whose name and addresses were known were not accorded due process of law without personal notice, has stressed the constitutional need for effective notice to parties whose names and addresses are known. The Court said:

". . .exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mail to apprise them of its pendency."

The reasons that underlie this doctrine were well stated by the Supreme Court of Indiana in striking down notice by publication of a sewer assessment proceeding in *Fritz v. Board of Trustees,* 252 N.E. 2d. 567 (1969);

"We are all aware that "legal publications" in newspapers are a poor and inadequate method of notification and can only be used. . . when actual notice. . . can not be given."

THE RIGHT TO APPEAL WITHOUT PENALTY BY APPELLATE COURTS HAS BEEN INFRINGED BY GEORGIA LAW

2. The right to an appeal is a fundamental part of this judicial system. The power of an appellate court to fine (and that, from the Appellant's point of view is exactly what has happened in this case) an Appellant from which it is tired of hearing is one which, if it exists at all, must be used only in the clearest of cases. To stretch a state statute to permit such a levy in the face of a trial court's recommendation of an appeal is a twofold deprivation of the rights of the Appellant. First, it deprives him of the right to appeal in safety of his possessions. Second, it has effectively deprived him of his right to a fair trial in the first place, since the record makes clear that the trial court, unsure of itself, was insuring itself with the assumption that all would work out well in the appellate process. The danger of this process to unpopular appellants is too great for this

Court to tolerate, and the definition of the applicable line by this Court is urgent.

The trial court in the instant case not only invited an appeal by the Appellant. Appellants raised the various points cited in the Appeal, and the trial court acknowledged their seriousness both by following the legal procedure of certifying the case to the Supreme Court and by specifically recommending that the questions wre best dealt with on appeal. Thus, the trial court in effect found that the points being raised by Appellant Hunt were not mere delaying tactics but rather too complicated for the trial court's consideration. (from Tr. p. 81)

"THE COURT: I am because, you know, I think I'm not sure I understand what Mr. Hunt is saying. He is a conglomerate of ideas over there and that is fine but, really, six or seven judges on some appellate court ought to look at this and say what it is going to be and satisfy Mr. Hunt as to whether or not what we do here is right or wrong.

If I don't have jurisdiction they will tell me I don't have jurisdiction. If I do have jurisdiction, they will tell me what I did was right or they will tell me what I did was wrong. And they will have a bank of time to spend resolving that issue and that's the difference between administration and justice. your right of appeal is certainly guaranteed and you will have the opportunity and they can spend hours reading briefs and spending time examining every facet of this problem."

In a subsequent hearing (Tr. Oct. 26, 1981, p. 14) the court again emphasized the legitimacy of the legal questions to be determined on appeal.

"THE COURT: That's fair approach to the Supreme Court. I think it raises an interesting question, too, and

I'm sure they will have a good time trying to resolve it." The instant appeal was in effect taken at the suggestion of the trial court and to now find that Appellant is merely taking it for purposes of delay is not only contrary to the obvious conclusion of the Trial Court but is an unconstitutional application of 6 Georgia Code Annotated 1801 in that it constitutes a deprivation of property without due process in that Appellants appealed upon the express suggestion of the trial court and now cannot be properly deprived of property for so doing. What the court system of Georgia has done in effect is a form of entrapment.

STATE COURT ACTIONS IN A CASE REMOVED TO FEDERAL COURT ARE INVALID AND CANNOT BE RATIFIED NUNC PRO TUNC UPON REMAND.

3. No judicial sale could lawfully take place under the auspices of a Georgia court when that court's jurisdiction had been superseded in a removable case by removal to the United States District Court for the Northern District of Georgia.

The sale by the Fulton County Sheriff on January 6, 1981 by its terms was held pursuant to the order of the Honorable Joel Fryer, Judge of the Superior Court of Fulton County and specifically subject to the approval of that Court. Such approval was by definition impossible due to the removal and such order lost the jurisdiction on which it was based at the time of the removal.

Nor are the order and action of the Sheriff saved by the exception in 28 USCA 1450 which preserves existing orders of the court. The Supreme Court of the United States in *Granny Goose Foods, Inc. v. Teamsters,* 415 U.S. 423 (1974) made it very clear that the purpose of that section is to preserve injunctions, restraining orders, and

orders of attachment and thereby maintain the status quo. Otherwise they would fall automatically and then permit some fresh independent action by the state courts changing the relative positions of the parties from the posture at the time of removal. Indeed, the Granny Goose case conclusively establishes the inappropriateness of the state's action in carrying out the sale in that even in dealing with an injunction it emphasized that, from the time of removal, federal procedure, and the mandates of the Congress of the United States must be followed, and federal officers employed to do so. It need not be pointed out that the Sheriff of Fulton County is not a judicial officer of the United States and lacks the power to conduct a judicial sale on behalf of the courts of the United States. To sell property certainly changes the status quo which the federal law was intended to maintain. Indeed, every state court of last resort that has faced the same problem has similarly concluded that the state jurisdiction to take further action has been wiped out by the removal. For example, in *Fossey v. State,* 254 Ind. 173 (1970) a federal removal was filed after a criminal trial had actually started. The Supreme Court of Indiana concluded that in spite of the obvious inconvenience to the state judicial system, the removal was effective and the actions of the state court were invalid from the moment of the filing of the complete removal papers and bond.

Nor can the subsequent remand give retroactive validity to what was invalid in the first place. An examination of the numerous cases cited in the annotated to 28 USC 1446 fails to show a single case in which such retroactive validity has been allowed. The states of Idaho, Louisiana, and Indiana have examined these issues and the Idaho case of *Hopson v. North American Insurance Co.,* 223 P2nd 799 (1951), which had been quoted at great length by the

Georgia Court of Appeals in *Allen v. Hatchett*, 86 SE 2d 662 (1955), supra, states precisely the position which was until this decision the law of Georgia. When a remand occurs a case reverts to the posture that it was in when the removal occurred, i.e., whatever took place in the interim must be treated as not having been done and must be done again if it was attempted during the removal period. Time must be treated as having stood still for state purposes during that period. Hence the nunc pro tunc approach to the invalid sale by Judge Fryer was erroneous.

The question of retroactive jurisdiction of the State Court claimed by Georgia in this case is important. Up until now, no state court of last resort had ever held under present federal law that a state court can continue with a case after its removal to a federal court, and hope that a remand will somehow ratify its acts. No state court of last resort has claimed the right in a removal case to permit its officers during a period of removal to carry out its pre-removal orders and to purport to alter or abolish property right of litigants who have sought to exercise their right to a federal forum. The Georgia approval effectively writes the last sentence of Section 1446(e) - "the State court will proceed no further unless and until the case is remanded" out of the statute and substitute an option in the state to proceed and hope for retroactive validity. There is no scintilla of basis for such a result.

The hole in the removal statutes which the Georgia Court has created is immense. If this Court permits Georgia to turn the removal system into a two-court lottery in which the removing party must also defend himself in the state court or risk loss of his rights or property in that court while the federal court is determining jurisdiction, the orderly system for one-court-at-a-time proceedings set up by Congress has been destroyed. Vindica-

tion of the removal statute in this case cries for this Court's action to reverse this Georgia decision before its adoption else where makes a mockery of federal removal procedures thoughout the country,

Respectfully submitted,

/s/Hugh S. Hunt,
Hugh S. Hunt, Pro Se

P.O. Box 356
Alexandria, Va. 22313
(301) 299-2920

CERTIFICATE OF SERVICE

This is to certify that I have this day served:

Jerry L. Collins
% Glenville Haldi, Esq.
P. O. Box 13955
Atlanta, Georgia 30324

Robert W. Henderson, Trustee
% Kenneth L. Millwood, Esq.
Smith, Cohen, Ringel, Kohler & Martin
2400 First National Bank Tower
Atlanta, Georgia 30303

with a copy of Appellant's Jurisdictional Statement by depositing a copy of same in the United States Mail, in a properly addressed envelope, with adequate postage thereon.

This 12 day of February, 1982.

/s/ Hugh S. Hunt,
Hugh S. Hunt, Pro Se

Appendix

IN THE
SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JERRY L. COLLINS,

Plaintiff

v.

HUGH LEE HUNT, f/k/a HUGH R. LEE,
and ROBERT HENDERSON,

Defendants

CIVIL ACTION, FILE NO. C-43823

FILED IN THIS COURT, THIS THE
6 Day of July, 1981
Janet Moore, Deputy Clerk

ORDER

A report of the sale as conducted on January 6, 1981, and previously ordered by this sale has been received and reviewed by the Court. The Court hereby approves the sale of the interest of the Defendant, Hugh S. Hunt, as contained in the previous orders of this Court, and approves the purchase of this interest by the Defendant, Edhul Company, for the sum of $395, 000.00.

It appears to the Court that Edhul Company has deposited the sum of $100,000.00 with the Sheriff of Fulton County, which was deposited in an interest bearing certificate. The Sheriff of Fulton County is ordered to convert to cash the $100,000.00 deposit previously made by Edhul Company, together with all accrued interest and

to pay this sum to Glenville Haldi, as Attorney for the Plaintiff, Jerry L. Collins.

The Defendant, Edhul Company, is hereby ordered to pay to Glenville Haldi, attorney for the Plaintiff, Jerry L. Collins, such amount which, when added to the principal and accrued interest on the amount already deposited with the Sheriff will equal the sum of $395,000.00, within ten (10) days from the date of this Order. When all of these payments have been made, Jerry L. Collins shall give the Defendant, Hugh S. Hunt, credit for the sum of $395,000.00 against the Fi. Fa. outstanding in Case No. B-91160.

The Trustee for the Reliance Trust, Robert Henderson, together with the Defendant, Hugh S. Hunt, and the Defendant, Edhul Company, may present to this Court whatever documents in the form of a bill of sale or otherwise they desire to have this Court execute to transfer title of the Defendant's interest in the said Reliance Trust to Edhul Company, and this Court shall consider them. However, any such documents should be exhibited to the Plaintiff before they are submitted to this Court.

Should Edhul Company fail to pay the total sum of $395,000.00, as provided above within ten (10) days from the date of this Order, the $100,000.00 paid by it, (together with all accrued interest), shall be forfeited and the sale to Edhul Company shall be declared null and void. Upon such event, either party may petition this Court for an order re-advertising the property for sale with four (4) weeks' advertisement, as in regular judicial sales and at such sale the Edhul Company shall be precluded from bidding and no bid made by or on behalf of Edhul Company shall be accepted.

Any application for such an order may be presented to the Court in charge upon three days' written notice to the

other parties, and the Court will decide such motion at the time of presentation and the said application will not go on the motions calendar.

This 6th day of July, 1981.

/s/Joel Fryer
Judge
Superior Court of Fulton
County
Atlanta Judicial Circuit

Presented by:

/s/ Glenville Haldi

Glenville Haldi
Attorney for Plaintiff

IN THE
SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JERRY L. COLLINS,

Plaintiff

v.

HUGH LEE HUNT, f/k/a HUGH R. LEE,
and ROBERT HENDERSON,

Defendants

CIVIL ACTION, FILE NO. C-43823

ORDER AND JUDGMENT OF REMITTITUR

The Order of this Court dated July 6, 1981, having been appealed to the Supreme Court of Georgia, and the Supreme Court of Georgia having affirmed the Order of this Court, the Order and Judgment of the Supreme Court of Georgia is hereby made the Judgment of this Court.

Pursuant to the mandate of the Supreme Court, and the Court finding that there is no just cause for delay, judgment in the amount of $29,500.00 is hereby entered, jointly and severally, against the Defendants, HUGH LEE HUNT and EDHUL CO., and the Clerk shall issue immediately a Fi. Fa. against these Defendants in this judgment amount. Any such Fi. Fa. entered against the Defendant, HUGH LEE HUNT, shall also show that HUGH LEE HUNT is known by the following names: HUE R. LEE, H. R. LEE, HUGH S. HUNT, and HUGH LEE HUNT.

The Judgment amount of $29,500.00 is computed as follows:

(a) Total bid price at the time of the sale was: $395,000.00.

(b) Deposit made at the time of the sale was $100,000.00.

(c) Balance owing at the time of sale was: $295,000.00.

(d) 10% of $295,000.00 equals $29,500.00.

SO ORDERED, this 8th day of January, 1982.

/s/Joel Fryer

Judge
Superior Court of Fulton
Country
Atlanta Judicial Circuit

Presented by:

Glenville Haldi
Attorney for Plaintiff
1570 Tower Place
3340 Peachtree Road, N.E.
Atlanta, Georgia, 30026
(404)261-4401

SUPREME COURT OF GEORGIA

Atlanta, January 12, 1982

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

EDHUL COMPANY ET AL. V. JERRY L. COLLINS ET AL.

Upon consideration of the Motion to Set Supersedeas Bond filed in this case it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams, Clerk.

EXCERPT FROM RECORD - JULY 6 1981
FULTON COUNTY SUPERIOR COURT
JOEL FRYER, JUDGE

"The Court: I think he has certain rights to set it aside had he taken jurisdiction of the case originally. I believe as well, Mr. Hunt, that once the remand – once the case is remanded, It is remanded ab initio; that is, all that is done from the beginning dates back from the beginning to the extent that any acts legally done while it was under consideration, the remand I mean the removal, was under consideration would be valid if the federal court would then say, well, we don't have any right to even deal with this; send it back. Anything that happened in the interim would be valid."

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JERRY L. COLLINS, Plaintiff	)	
v.	)	CIVIL ACTION FILE
	)	NO. C-43823
HUGH LEE HUNT, f/k/a HUGH R. LEE, and ROBERT HENDERSON, Defendants	)	

MOTION AND NOTICE OF
WITHDRAWAL OF COUNSEL

COMES NOW the Defendant Hunt's counsel, James E. Flynn, Jr., and gives this his formal notice to the Court and all parties to this action of his intention to withdraw from this matter as counsel for the Defendant Hunt, instanter.

Further, this counsel moves the Honorable Court for an Order permitting said withdrawal instanter, and in support thereof shows the Court the following:

1. That formal prior notice of this counsel's intention to withdraw instanter has been given the Defendant Hunt by the undersigned.

2. That the Defendant Hunt has acknowledged and accepted said notices of withdrawal.

3. That counsel for the Plaintiff and the Defendant Henderson have consented to this withdrawal.

4. That all further notices and pleadings in this matter be forwarded directly to the Defendant Hunt at his place of residence, until instructed otherwise by him, said address being:

HUGH S. HUNT
12219 River Road
Potomac, Maryland 20854
(301) 299-2920

WHEREFORE, counsel for the Defendant Hunt respectfully requests that the Motion be granted an an Order allowing said withdrawal instanter be issue, and further, that the Clerk of Court be instructed to delete the name of James E. Flynn, Jr., from the official record and file in this case as counsel for the Defendant Hunt, said record and file to show the Defendant as representing himself.

Respectfully submitted,

2753 Ponderosa Circle
Decatur, Georgia 30033
404/636-8254

/s/ _____
James E. Flynn, Jr.

Consented to:

/s/
Glenville Haldi
Attorney for the Plaintiff

No Objection

Kenneth I. Millwood
Attorney for the Defendant Henderson

[Certificate of Service omitted in printing]

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JERRY L. COLLINS, Plaintiff	)	
	)	
v.	)	CIVIL ACTION FILE
	)	NO. C-43823
HUGH LEE HUNT, f/k/a HUGH R. LEE, and ROBERT HENDERSON, Defendants	)	

ORDER

The Motion and Notice of Withdrawal of Counsel being duly presented to this Court by counsel for the Defendant Hunt, it appearing that proper notice of withdrawal has been given to the Defendant Hunt by his counsel of record James E. Flynn, Jr., that counsel for all parties consent to this withdrawal and not objection being raised thereto,

IT IS HEREBY ORDERED that the Motion and Notice of Withdrawal of Counsel James E. Flynn, Jr. be and is hereby GRANTED, said James E. Flynn, Jr., from the date of this Order, is to have his name stricken from the record and file of this Court in this matter as counsel of record for the Defendant Hunt, and that a copy of the Motion and this Order is to be served on all parties to this case.

So Ordered, this 10 day of October, 1980.

/s/_____
JOEL J. FRYER, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Consented to:

/s/_____
Glenville Haldi
Attorney for the Plaintiff

No Objection

_____
Kenneth L. Millwood
Attorney for the Defendant Henderson

FULTON COUNTY DAILY REPORT,
THURSDAY, OCTOBER 30, 1980
Page Three-A

C-43823 Jerry L. Collins vs Hugh Lee Hunt, Hugh R Lee, Robert Henderson, Glenville Haldi for plff. Kenneth L. Millwood, Smith, Cohen, Ringel, Kohler & Martin for dfts.

SUPREME COURT OF THE STATE OF GEORGIA

HUGH S. HUNT and EDHUL CO., Appellants	)	
VS.	)	CASE NUMBER 38005
JERRY L. COLLINS, et al., Appellee	)	

NOTICE OF APPEAL

Please note that Hugh S. Hunt thereby appeals the decision of your Honorable Court of November 19, 1981 in the above captioned matter and will file a Jurisdiction Statement in the Supreme Court of the United States to perfect such appeal.

Respectfully submitted,

Hugh S. Hunt, Pro Se

12219 River Road
Potomac, Md. 20854

Phone #301-299-2920

crf:L-49,H-SUPCTNOTAPPEAL,2/17/82,elk
Filed Feb. 17, 1982 — Supreme Court of Georgia

In the Supreme Court of Georgia

Decided: NOV 19 1981

38005. EDHUL COMPANY ET AL.
v.
JERRY L. COLLINS ET AL.

CLARKE, Justice.

1. This court has determined that this is a proper case for application of Rule 59.

2. The court finds that this appeal was taken for delay only and the clerk is directed to enter an award for damages in favor of the appellee upon the remittitur. Code Ann. § 6-1801. The damages are to be computed according to the following procedure: First, take the total amount of the sales price of Hunt's interest in the executory trust. Second, deduct therefrom such amount as has been previously paid into the registry of the court. Third, to this result apply a factor of ten percent (10%), which ten percent (10%) shall be the amount of the damages.

Judgment affirmed without opinion pursuant to Rule 59. All the Justices concur, except Jordan, C. J., dissents to award of damages.

Motion to Dismiss or Affirm

Office - Supreme Court
FILED
MAY 26 1982
STEVAS,
CLERK

No. 81-1589

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HUGH S. HUNT,

Appellant

v.

JERRY L. COLLINS,

Appellee

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1589

HUGH S. HUNT,

Appellant

v.

JERRY L. COLLINS,

Appellee

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

Comes now the Appellee, and moves this Court to dismiss the Appeal as filed by the Appellant.

PRELIMINARY STATEMENT

The facts of this case as stated by the Appellant are not correct and are not complete. The Appellee will supplement the facts in each division of his argument to follow. However, at the outset, the Appellee points out that none of these alleged Constitutional errors were ever raised in the trial court. They were presented for the first time in the Supreme Court of Georgia, after all of the trial court proceedings complained of had been concluded.

Both the Georgia Courts and this Court have long held that jurisdiction in appeals such as this is appellate and not original. Hence, any alleged error (especially claims of Constitutional error) must have first been presented to the trial court for adjudication and cannot be raised on appeal for the first time. (See: *Freeman v. City of Valdosta,* 119 Ga. App. 375)

Applying that standard here, the Appellant has no jurisdictional basis to present this appeal.

I.

The Question of Notice By Publication In A Newspaper

The Appellant has confused notice of trial proceedings with original service. It is the Appellant's contention that he is entitled to personal notification every time the trial court takes any act or schedules any hearing. The Appellant does not contend that this is a standard to be applied to all litigants, but only to him because he resides out of the forum.

The Appellant cites *Mullane v. Central Hanover Bank and Trust Co.,* 339 U.S. 306, 70 S. Ct. 652 (1950). This case dealt with original service upon diverse heirs in an estate proceeding who lived in different states and had no way of knowing of the existence of the proceeding. *Mullane* did not disallow all original service by publication and specifically allowed original service by publication in some situations.

In this case we have not original service, but notice of a hearing in a case in which the Appellant had previously been personally served and in which numerous other proceedings had been held.

Moreover, the hearing which was held was on a motion filed by the Appellant. He seems to contend that he can file a motion with the court and then remain totally unaware of the progress of that motion and the hearing date set for it. He makes no attempt to show that he did anything to acquaint himself with the rules of court, the procedures, or the progress of the calendar. He was not misled by anyone because he failed to take any step to make inquiry or otherwise acquaint himself with what was going on.

The proceedings show that the Appellant was represented for a time by a local attorney, but the attorney withdrew and the Appellant proceeded to represent himself. The Appellant, while not a graduate, spent two years as a student at the Harvard Law School. He has filed many motions and other pleadings on his own behalf in this case and has attended many hearings. He is familiar with the legal system and the way the courts operate.

As the Appellant has noted, the appellate courts of Georgia have specifically approved the publication of pending court proceedings in the Fulton County Daily Report as being proper and reasonable methods of notice to the parties. (*Spyropoulos v. Linard Estate,* 148 Ga. App. 380, 251 SE2d 327 (1978)). The Appellant seems to concede that this is generally reasonable but contends that a special standard should be adopted for him because he spends much of his time in another state.

His decision to represent himself, and, in effect, remove his attorney from this state, was purely voluntary. Yet, he contends that this entitled him to special privileges not enjoyed by any of the other parties in this case or any other case.

The Appellee believes that these authorities form a correct statement of the law:

"Attorneys practicing before a court, regardless of whether they reside in the same county or not, and the parties to actions therein are bound to take notice of the duty-adopted and promulgated rules of such court, and ignorance of a rule ordinarily is no excuse for non-compliance therewith. . . ."

21 C.S.J., § 176(b), p. 280

"Where parties have a case in court, it is their duty to attend and look after their interests. They cannot remain away without sufficient cause and subsequently have set aside a judgment properly rendered against them, especially where, by the exercise of the least diligence, they could have ascertained the time when the case was set for trial. (cite omit) They are bound to take notice of the time and place of trial and of when their presence is required. (cite omit)

Whenever a party is brought into court, he is bound to full diligence, which if he uses, he will obtain his rights."

National Enterprises, Inc. v. Davis
145 Ga. App. 198, 199

"As a general rule, in the absence of a statute or rule of court to the contrary, the parties to a cause, where the court has properly obtained jurisdiction over them, are not entitled to a notice of the trial, or of the fixing of a day for trial, or of a setting for trial, other than the setting of the case on the docket. The parties are under a duty without notice to take cognizance of a regular term of court and to be present in person or through counsel to protect their interest, to follow their case in all its aspects until finally disposed of, to keep themselves informed of the time their case is set for trial, and to take

> notice of the time and place of trial and of when their presence is req ired."
>
> 88 C.J.S., § 11

Now, in more detail about the facts. The Appellant was personally served on August 12, 1978. He filed no answer. On August 17, 1979, he filed a Motion to Open the Default. That motion stated that he thought that a co-defendant was filing an answer for him. His motion alleged that he took no action himself for many months and did nothing to see whether or not such an answer had been filed for him. Even if an answer had not been filed for him, Georgia Law allows as an absolute right the opening of a default within fifteen (15) days by any party [*Ga. Code Ann.*, § 81A-155(a)]. Since the motion shows nothing in the way of even a semblance of diligence on the part of the Appellant, it is doubtful if the motion to open the default had any merit at all (*Snow v. Conley*, 113 Ga. App. 486).

The Court overruled the motion to open the default on November 25, 1980. Seemingly, it is this Order which the Appellant complains of. What the Appellant's brief makes no mention of is that on or about May 12, 1981, the Appellant filed another motion entitled Notice by Defendant, Hugh S. Hunt, Of Intent To Reoffer Renewed Motion to Reopen Default.

This motion was heard and overruled by the trial court on July 6, 1981. Thus, the Appellant seems to have had the very notice and hearing he complains was missing from the first order, and his remedy was to have appealed and contend the trial court should have allowed him to open the default. Instead, he contends that the first hearing was not constitutionally permissible, rather than complain of the second hearing which denied him the relief he sought.

We again note that never has any such constitutional issue been presented to the trial court.

II.

The Frivolous Appeal Penalty

What is missing from the Appellant's statement of facts is that his appeal to the Supreme Court of Georgia was an interlocutory appeal. The case was not final and is still pending, awaiting jury trial. Georgia has adopted a specific procedure for such appeals and they are not allowed as a matter of right [*Ga. Code Ann.* § 6-701(2)].

The first step in such an interlocutory appeal is to obtain a certificate of the trial judge. The Appellant obtained such a certificate, and then made his application for an interlocutory appeal to the Georgia Supreme Court. Briefs were filed for both parties and the Supreme Court of Georgia denied the application for interlocutory appeal.

The Appellant went ahead and filed a direct appeal anyway. It was from this direct appeal that the Georgia Supreme Court found as a matter of fact that the appeal had been taken for the purpose of delay only and ordered a 10% penalty.

III.

Was The Sale Stayed By The Attempted Removal To Federal Court

A.

This entire point is moot. The purchaser at the sale (a corporation almost totally owned and controlled by the Appellant, Hunt) defaulted on its purchase of the trust interest. The Superior Court of Fulton County has set the

sale aside and has ordered a resale. There is nothing to determine or decide here where the Appellant attempts to attack the sale. The sale has been totally rescinded, but, it should be noted, because of the Appellant's acts of default.

B.

Should the Court desire to look further into the legality of the sale, this chronology may be helpful:

(1) On July 6, 1979, the Superior Court determined that this trust interest of the Appellant could and should be sold to pay this outstanding judgment.

(2) On April 29, 1980, the Supreme Court of Georgia affirmed the Superior Court (*Hunt, et al. v. Collins,* 245 Ga. 776).

(3) On September 25, 1980, the Fulton Superior Court determined the procedures of the sale and ordered the sale to take place on January 6, 1981.

(4) On December 3, 1980, the Appellant attempted to remove the case to Federal Court.

(5) On January 6, 1981, the Sheriff conducted the sale as ordered.

(6) On March 26, 1981, the Federal Court entered its order of remand.

(7) On July 6, 1981, the Fulton Superior Court approved the sale.

The Fulton Superior Court took no action whatsoever during the period of attempted removal. The Appellant contends that the Sheriff was somehow automatically precluded from proceeding with the sale on January 6, 1981.

The flaw in this argument is that removal to the Federal Court does not erase or make void what has gone before in the State Court. Rather, the forum simply shifts and the Federal Court takes (and takes up) the case in exactly the posture it occupies.

To the contrary of Appellant's argument, the Federal Court is bound by state law in a removal action. Here the law had been established not only that a sale should take place, but Judge Fryer's order validly and legally and correctly entered on September 25, 1980, bound the Federal Court on December 3, 1980 (and January 6, 1981).

The Federal Court was required to follow the previous orders, rulings and findings of the State Court. This is exactly what happened.

Had Judge Fryer attempted to exercise further judicial control after removal, this would have been error. For instance, had Judge Fryer ordered the sale to take place after the removal petition was filed, this would present a ground of attack. However, Judge Fryer did nothing. The Appellant seems to argue that Judge Fryer should have entered an order staying the sale, but this he obviously could not do.

The Federal statutes and the Federal case law at this point are absolutely clear:

> ". . . All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."
>
> 28 U.S.C.A. 1450

> "The transfer of the suit from the state court to the (district) court did not vacate what had been done in the state court previous to the removal.

> The (district) court. . . takes the case in the condition it was when the state court was deprived of its jurisdiction. . . (the district court) takes the case up where the state court left it off."
>
> *Duncan v. Gegan*
> 101 U.S. 810

Indeed, even the case cited by the Appellant, *Granny Goose Foods, Inc. v. Teamsters,* 415 U.S. 423, speaks directly to this point:

> "In addition, the statute insures that interlocutory orders entered by the state court to protect various rights of the parties will not lapse upon removal. Thus, attachments, sequestrations, bonds, undertakings, securities, injunctions, and other orders obtained in state court all remain effective after the case is removed to federal court. . . "
>
> p. 436

As the Federal Statute (28 U.S.C.A. 1450), and the cases all indicate, it was encumbent upon the Appellant to ask the Federal District Court for a stay of modification of the sale. In fact, this is precisely what the Appellant did. The Appellant filed a written Motion with the Federal District Court during the removal period and asked the Federal District Court to stop the sale. The Federal District Court denied this request.

CONCLUSION

The Appellant has either failed to raise in the trial court the points he enumerates as error in this Appeal, or has failed to follow appropriate procedural court rules and even ordinary diligence in the Georgia Courts. Nowhere does he point out how Georgia has adopted any unconstitutional procedures, but, his brief discloses that any

problems are of his own making and his failure to properly present these points to the trial court.

For all of these reasons this appeal should be dismissed.

Respectfully Submitted,

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3340 Peachtree Road, N. E.
Atlanta, Georgia 30026
Ph-404-261-4401

Attorney for Appellee

Appellant's Reply Brief

Office - Supreme Court
FILED
JUN 14 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1589

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HUGH S. HUNT,

Appellant,

v.

JERRY L. COLLINS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF OPPOSING MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1589

HUGH S. HUNT,
Appellant,

v.

JERRY L. COLLINS,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF GEORGIA

BRIEF OPPOSING MOTION TO DISMISS

ARGUMENT

Appellee has attempted to deceive this court as to the state of the record below. Specific instances are cited under the headings employed by Appellee.

Appellant calls this problem to the Court's attention for two reasons: First, since it is essential that the court know the facts in order to deal with the appeal. Second, because the case has arisen procedurally from the state rather than the federal courts because of a similar falsehood on the part of Appellee.

Earlier in this case, in Appellee's Motion for Remand in the United States District Court for the Northern District of Georgia, the following appeared:

> "IV. Removal is Not Timely. The order adding EDHUL was signed October 18, 1980. Removal was not sought within 30 days. EDHUL Company was notified prior to the Court's ruling and participated in the argument prior to the October 18th order."

In reliance thereon, the United States District Court granted remand, finding that Hugh S. Hunt "actually received notice and a copy of Judge Fryer's order on October 20, 1980," in direct contradiction with Hunt's sworn statement.

Such statement of Appellee was wholly false. There had been no hearing and no participation by EDHUL, and Appellee and his attorney, Glenville Haldi, well knew it when they advised the Court otherwise.

Once again, faced with a Court without a full record in front of it, Appellee has now tried the same tactics. He has misrepresented (a) whether a question was raised below, (b) the grounds for the Supreme Court of Georgia's actions in rejecting the appeal, (c) the sequence of events surrounding the filing of the appeal and (d) the alleged rescission of a sale pursuant to which he still holds $105,000, which he would have to return if the sale were set aside. Such blatant misrepresentation of the record should not be tolerated, and counsel for Appellee should be subjected to appropriate discipline for his conduct.

PRELIMINARY STATEMENT

The statement of the Appellee that "none of these alleged Constitutional errors of the lower court were called to the attention of the trial Court" (p. 1) is totally inac-

curate and demands a reply brief. A more accurate statement would be that the lower court refused to hear them although the inadequacy of notice as a matter of law was squarely raised by Defendant in his Renewed Motion to Reopen Defauit on May 12, 1982 and in argument. For example on page 60 of the Transcript of July 6, 1981, the following colloquy occurs:

"MR. HUNT: . . . this sort of thing that we were deprived of our constitutional right and . . .

MR. HUNT: Right now it comes back before you."

THE COURT: that's all in the federal courts."

Consequently they certainly have not been raised on appeal for the first time. The trial Court simply would not listen.

For example on page 89, the following appears:

"MR. HUNT: At the same time, Your Honor, there is a motion in the record, if you are taking jurisdiction of this case, to reopen the default.

THE COURT: Okay. I will summarily deny that."

From the Transcript p. 91:

MR. HUNT: Yes, Your Honor, but our request was for a hearing so I suppose the hearing is also –

THE COURT: I have denied all that.

MR. HUNT: You denied the hearing by signing –

THE COURT: It's on the record. It's on the record, Mr. Hunt, so if you take exception to it, do it in the Supreme Court.

I.

The Inadequacy of Newspaper Notice

Appellee has here again misrepresented the state of the record both by the statement "We again note that never has any such constitutional issue been presented to the trial Court" (p. 6) (which appellant has discussed above).

Also by the suggestion that the trial court provided this "very notice and hearing he complains was missing from the first order," he has again sought to mislead the Court.

A specific court order had been issued (Page 10a of the Jurisdictional Statement) requiring that notice be provided Appellant at a specified address. Appellant reasonably relied upon such order. Nevertheless, despite its own order, notice was given solely by means of newspaper notices that did not even mention that a matter involving Appellant as distinguished from other parties was before the Court. Then appellant's motion to open a default judgment was dismissed for his failure to appeal and argue. Even if *Spyropolous v. Leonard Estate,* 148 Ga. App. 380, 251 SE2d 327 (1978) were valid law, which Appellant urges it is not, there is no possible basis for the lower court to penalize Appellant retroactively for relying on the court's own order directing manner of notice. Instead the Court invoked general rules that had been previously superseded by the Court's own specific order. Later the trial Court upheld its earlier action and refused to hear the merits of the Motion to Reopen Default with the words "I will summarily deny that." Appellant therefore still has not had his chance to escape the results of the impermissible notice.

II

The Frivolous Appeal Penalty

Here for the third time, Appellee is misrepresenting the status of the record below. The Appeal was not merely an interlocutory appeal as stated by Appellee because the judgment to both the sale of the trust asset and the upholding of the default judgment was final. Review was therefore obtainable under Ga. Code Ann. 6-701 (1).

The Supreme Court of Georgia recognized this by affirming the judgment below, rather than dismissing for want of appellate jurisdiction.

It should be noted that, contrary to the carefully cultivated impression of Appellee's brief, application for both the interlocutory review and appeal were made simultaneously on July 23, 1981, in accordance with normal Georgia practice. Appellee's choice of words that "Appellant went ahead and filed a direct appeal anyway" requires an interpretation that Appellant filed a direct appeal after the rejection of the other and was penalized by the Georgia Supreme Court for doing so; an entirely different sequence of events than actually occurred.

By this fictitious sequence Appellee attempts to obscure the fact that there was no justification for the Supreme Court of Georgia to attach the penalty for a frivolous appeal to what very plainly was not a frivolous appeal, since federal procedure requires such an act before an appeal to the Supreme Court of the United States.

III

The Question of the Stay

The sale has not been "totally rescinded", (Appellee's Brief p. 7) nor has the Court below acted "because of the Appellant's acts of default." This is pure wholecloth and, indeed, Appellee has $105,000 of the sale proceeds in his pocket, which he would have to return if the sale is found improper, so that the point is hardly moot. Furthermore, the resale by the Superior Court has been cancelled and a motion is pending to set aside the finding of default. The question of the propriety of the conduct of a sale of an asset under federal removal by a state court officer during a period of federal removal is still very much before this court. According to this court in *Granny Goose Foods, Inc. v. Teamsters*, 415 US 423, this is not permissible and it is clear that the failure of the United States District Court to protect its own jurisdiction does not overrule the Congress of the United States or this Court in defining that jurisdiction or permit a state judicial officer to function de facto when the law requires a federal officer to act.

SUMMARY

None of the points raised by Appellee, largely through an attempt to distort the facts, reduces the seriousness of the questions before this Court.

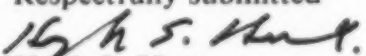
(1) Appellant was denied the right to notice of Court proceeding by the Georgia Court acting under Georgia statutes.

(2) Appellant has been fined by the Supreme Court of Georgia under a Georgia statute for taking a bonafide appeal at the suggestion of the trial court and pursuing the only possible route to preserve his federally created rights.

(3) Appellant's property has been sold by a state Court officer acting under the auspices of the state court and avowedly subject only to its approval during a period of federal removal.

Appellant is confident that this Court will vindicate him in these matters.

Respectfully submitted



Hugh S. Hunt
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CERTIFICATE OF SERVICE

This is to certify that I have this day served:

Jerry L. Collins
c/o Glenville Haldi,, Esq.
P.O. Box 13955
Atlanta, Georgia 30324

Robert W. Henderson, Trustee
c/o Kenneth L. Millwood, Esq.
Smith, Cohen, Ringel, Kohler
& Martin
2400 First National Bank Tower
Atlanta, Georgia 30303

with a copy of Appellant's Brief Opposing Motion To Dismiss by depositing a copy of same in the United States Mail, in properly addressed envelopes, with adequate postage thereon.

Hugh S. Hunt

Hugh S. Hunt, Pro Se